



MEDICAL BOARD OF WESTERN AUSTRALIA

Unit 1, 8 Alvan Street Subiaco WA 6008
PO Box 1437, Subiaco, Western Australia 6904
Telephone: + 61 8 6380 3500 Facsimile: + 61 8 9321 1744
Email : complaints@wa.medicalboard.com.au

Information Sheet

The Medical Board of Western Australia

The Medical Board of Western Australia ("the Board") is an independent statutory authority responsible for administering and overseeing the *Medical Practitioners Act 2008 (WA)* ("the Act"). The Board registers all doctors working in WA and monitors their conduct and the standard of the treatment they provide. The Board is comprised of doctors (including experts in areas of medicine), a lawyer and community representatives. The Director General of Health and the Consumer Protection Commissioner are also represented on the Board.

The Board receives, investigates and determines notifications (complaints) against doctors registered in WA. If a notification does not involve a potential breach of the Act, the Board may refer the matter to the Office of Health Review.

Office of Health Review

The Office of Health Review ("OHR") is an independent State Government agency established to deal with complaints about health and disability services in Western Australia.

The OHR deals with various complaint issues which range from a health provider denying or restricting access to medical records, charging excessive fees or acting unreasonably about fees, decision making, treatment, privacy issues and information.

The Medical Practitioners Act 2008 (WA)

The relevant provisions regarding inquiries into medical practitioners are set out in Part 6 of the Act. Matters may be referred for disciplinary action when it appears that a medical practitioner:

- has acted carelessly, incompetently or improperly;
- has breached the Act;
- has provided services that were excessive, unnecessary or not reasonably necessary for the recipient's wellbeing;
- is guilty of not complying with or contravening a condition or restriction imposed by the Board applying to that person's registration or the practise of medicine by that person;
- has been convicted of an offence the nature of which renders the person unfit to practise as a medical practitioner;
- has engaged in sexual misconduct;
- is adversely affected by a dependence on alcohol or any other drug;
- is suffering from an impairment (physical or mental) to the extent that the practitioner's ability to practise medicine is or is likely to be affected adversely;
- does not have sufficient knowledge and skill to practise medicine safely and competently.

If a notification fails to meet this threshold, the Board is unable to proceed with disciplinary action.

Type of Proceedings

When the Board is satisfied that the medical practitioner has breached the Act, the Board may:

- Refer the matter to the State Administrative Tribunal (SAT); or
- Refer the matter to the Professional Standards Committee (PSC).

The State Administrative Tribunal (SAT) was established in Western Australia in 2005 as an independent body that makes and reviews a range of administrative decisions. Individuals, businesses, public officials and vocational boards can bring before the SAT many different types of applications related to civil, commercial and personal matters.

Matters which may lead to a finding of deregistration or suspension of the medical practitioner shall be referred to SAT.

The PSC considers matters that do not warrant a proceeding before SAT. However sending a matter to PSC does not prevent the Board from referring the matter to SAT if the PSC advises the Board to do so.

SAT may make any one or more of the following determinations:

- order the removal of the name of the medical practitioner from the Register of Medical Practitioners in WA ("the Register");
- order that the registration of the medical practitioner be suspended for such a period not exceeding 2 years as specified in the order;
- impose conditions;
- impose a penalty not exceeding \$25,000;
- reprimand the medical practitioner.

The PSC considers and determines other matters referred by the Board and may recommend:

- that the Board reprimand the medical practitioner;
- the medical practitioner pay a fine to the Board of an amount not exceeding \$5,000 specified in the order;
- that the Board impose restrictions or conditions or both on the practise of medicine by the medical practitioner.

If the Board is of the opinion that the activity of a medical practitioner, will involve the risk of imminent injury or harm to the physical or mental health of any person, the Board may pursuant to section 87 of the Act:

- (a) give to the medical practitioner who is carrying on that activity an order prohibiting the carrying on of the activity for a period of not more than 30 days;
- (b) give to the medical practitioner —
 - (i) an order to comply, for a period of not more than 30 days, with such conditions as the Board thinks fit in relation to the practise of medicine by that medical practitioner; or
 - (ii) an order suspending the person from the practise of medicine, either generally or in relation to any specified circumstances or service, for a period of not more than 30 days.

Under some circumstances, the Board may require the medical practitioner to give an undertaking to comply with certain restrictions relating to the practise of medicine.

The Board may also recommend that an attempt should be made to settle a notification by conciliation under Division 8 of the Act.

Where the Board is satisfied that a registered medical practitioner's registration in another State is cancelled or suspended; or is subject to a condition on disciplinary grounds, or as a result of or anticipation of criminal, civil or disciplinary proceedings, then the person's registration in WA is affected in the same way.

Any medical practitioner who is aggrieved by any decision of the Board or PSC may apply to SAT for a review of the decision.

The Board is empowered to take action against a person who claims to be a medical practitioner who practises medicine.

Definition of Terms

The following range of terms may arise during disciplinary proceedings:

Incompetency

Incompetency involves an unfitness to practise medicine or an inability to perform the techniques or reach the judgements needed for the proper practise of medicine in a particular field. There is no intentional wrongdoing on the part of the practitioner.

Improper conduct

Improper conduct means serious impropriety or misconduct in a professional respect, judged by the standards applied by right thinking members of the profession of good repute, honesty and competence. Impropriety might be established by conduct which was relevantly performed with a reckless indifference as to its consequences or which involved a deliberate departure from generally accepted professional standards. For example, a doctor may be found to treat patients roughly or swear heatedly during a consultation.

The following definitions may arise in the courts, but the terms are not applied in Medical Board inquiries.

Negligence

The term negligence arises in law where there is a duty of care, a breach of that duty and there is damage as a consequence of that breach. A duty of care is an obligation to avoid causing harm.

Professional misconduct

The term professional misconduct has been defined in court as being more than negligence or professional incompetence. It includes a deliberate departure from accepted standards and shows indifference on the part of the doctor amounting to an abuse of the privilege of being a registered doctor.

Unprofessional conduct

The term unprofessional conduct means improper or unethical conduct in relation to the practise of medicine and the concept is based on a breach of ethical standards without necessarily amounting to negligence.

Medical Board of Western Australia
UNIT 1, 8 ALVAN Street
SUBIACO WA 6008
Telephone: (08) 6380 3500

Office of Health Review
Level 17, St Martins Tower
44 St Georges Terrace
PERTH WA 6000
Telephone: (08) 9323 0600